

**REMARKS/ARGUMENTS**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed May 11, 2006. Claims 1-29 remain pending. Reconsideration and reexamination are respectfully requested.

**Rejection under 35 U.S.C. § 102(b)**

Claims 1, 6-8, and 13 are rejected as being anticipated by Maloney et al. (U.S. 5,818,907). Applicants respectfully disagree. Independent claim 1 recites:

1. (Original) A method for providing supervision over the activities of a number of representatives of a business, the method comprising the steps of:  
providing a database, each of the number of representatives recording his/her activities in the database;  
providing a number of reports, each report defining a number of unacceptable activity parameters;  
running the number of reports against the database, each report checking the recorded activities of each representative against the number of unacceptable activity parameters defined in the report; and  
providing a listing of alerts for only those activities in the database that fall within the unacceptable activity parameters defined in the number of reports.

(Emphasis Added). As can be seen, claim 1 recites the step of providing a number of reports, wherein each report defines a number of unacceptable activity parameters. The Examiner asserts that Maloney et al. teach the step of providing a number of reports, pointing to Figure 1 for support. The Examiner appears to be equating the number of reports of claim 1 with the quality scoring icon 26 shown in Figure 1, where the quality scoring icon constitutes making a determination between good and bad or acceptable and unacceptable, and thus meets the claimed step. Applicants respectfully disagree. The only description of quality scoring provided by Maloney et al. appears to be:

Notebook icon 26 represents the quality scoring that the invention makes possible. Based on the information that the preferred embodiment makes available both consistently and equitably, icon 28 represents the result of a supervisor being able to follow up with the call center agent and improve the agent's overall

performance quality.

See column 4, lines 14-20. Applicants submit that one of ordinary skill in the art would not interpret the generic "quality scoring", having no further description, as anticipating the specific method steps recited in claim 1. MPEP 2131 states that, in order to anticipate a claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim."

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." Applicants submit that Maloney et al. do not teach each and every step of the claimed method in as complete detail as is contained in claim 1.

In particular, Maloney et al. do not appear to teach defining a number of unacceptable activity parameters. The general disclosure of "a supervisor being able to follow up with the call center agent and improve the agent's overall performance quality" cannot be seen to teach the specific claimed method step. Maloney et al. appear to teach a supervisor being able to review calls made by an agent to review the agent's performance. However, Maloney et al. do not appear to teach, disclose or suggest "providing a number of reports, each report defining a number of unacceptable activity parameters", as recited in claim 1. More specifically, there does not appear to anything in Maloney et al. that suggests that the "quality scoring" icon 26 of Figure 1 is a report that defines a number of unacceptable activity parameters, as recited in claim 1. Notably, Maloney et al. do not appear to define parameters in a report that, when run against the database of activities, each report checks the recorded activities of each representative against the number of unacceptable activity parameters defined in the report, as recited in claim 1.

With respect to the recited reports, Maloney et al. do not appear to teach producing monitor reports for each monitoring session that is recorded, where the reports contain information about the days and times an agent's calls were monitored, the number of calls made and the duration of the calls. See column 2, lines 47-48, column 5, lines 32-56 and FIG. 3. Maloney et al. also appear to teach automatically providing reports of the monitoring activity within the call center. See column 3, lines 14-16. However, the "reports" of Maloney et al. appear to be related to the number and duration of calls made by agents according to dates and

times. The reports of Maloney et al. do not, however, appear to include a number of unacceptable activity parameters, as recited in claim 1. Nor do any of the “reports” of Maloney et al. appear to define parameters, such that when the report is run against the database of activities, each report checks the recorded activities of each representative against the number of unacceptable activity parameters defined in the report, as recited in claim 1.

The Examiner asserts that the quality scoring report would keep a tally or track of the acceptable and unacceptable parameters. Applicants have reviewed the description of Figure 1 in Maloney et al. and have found no such teaching. It appears the Examiner is making an assumption as to what the system of Maloney et al. could do, or that Maloney et al. inherently provides a number of reports, where each report defining a number of unacceptable activity parameters. However, both of these approaches are not the proper standard for an anticipation rejection. As noted in MPEP § 2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill (Emphasis Added). Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. In the present case, Applicant does not believe it can readily be argued that the quality scoring report of Maloney et al. necessarily defines a number of unacceptable activity parameters, as recited in claim 1. In fact, it would appear that the reports of Maloney et al. do not define unacceptable activity parameters, such that when the report is run against the database of activities, each report checks the recorded activities of each representative against the number of unacceptable activity parameters defined in the report, as recited in claim 1.

Additionally, Maloney et al. do not appear to teach a step of running reports against a database, with each report checking the recorded activities of each representative against the number of unacceptable or acceptable activity parameters defined in the report, as is recited in claim 1. Maloney et al. appear to teach a database containing information pertaining to phone

extensions, supervisors, monitoring periods and monitoring sessions. See column 10, lines 35-38. Maloney et al. do not, however, appear to teach running reports that include a number of unacceptable activity parameters against the database, as is recited in claim 1.

With respect to the step of providing a listing of alerts, the Examiner asserts that the follow up program 28 of Maloney et al. represents an alert as it informs or alerts the representative to the status of their performance with respect to quality. Applicants respectfully disagree. Maloney et al. describe icon 28 in Figure 1 as "represents the result of a supervisor being able to follow up with the call center agent and improve the agent's overall performance quality." (Emphasis added). Thus, Maloney et al. appear to teach the result of a supervisor using the system to monitor and evaluate a call center agent, but does not teach the specific method step of providing a listing of alerts for only those activities in the database that fall within the unacceptable activity parameters defined in the report(s)), as is recited in claim 1. For these and other reasons, claim 1 and dependent claims 2-12 are believed to be clearly patentable over Maloney et al. For similar and other reasons, claim 13 is believed to be clearly patentable over Maloney et al.

Regarding claims 6-8, for at least the reasons set forth above, Maloney et al. do not appear to teach the step of providing a listing of alerts. Additionally, Maloney et al. do not appear to teach storing a listing of alerts (claim 6) or assembling a listing of alerts that were generated during a predetermined previous time period (claim 8). Regarding claim 7, the Examiner asserts that Maloney et al.'s follow up program 28, where the representative is informed of their scores, anticipates the claimed step of performing follow up activity for selected alerts and recording the follow up activity for the selected alerts in the database. Applicants respectfully disagree. As stated above, the only description of icon 28 in Figure 1 of Maloney et al. appears to be "icon 28 represents the result of a supervisor being able to follow up with the call center agent and improve the agent's overall performance quality." See column 4, lines 18-20. Applicants submit that such a generic teaching of a supervisor following up with an agent cannot be deemed to anticipate the specific method steps of performing follow up activity for selected alerts AND recording the follow up activity for the selected alerts.

Applicants submit that Maloney et al. do not appear to teach the specific method steps as claimed. Additionally, there is no motivation for one of ordinary skill in the art to modify the methods of Maloney et al. to achieve the claimed methods. Reconsideration and withdrawal of the rejection is respectfully requested.

### **Rejection under 35 U.S.C. § 103**

Claims 2-5, 9, 10, 12, 14-16, and 27 are rejected as being unpatentable over Maloney et al. et al. in view of Levine et al. (US 6,233,566). For at least the reasons set forth above, Maloney et al. do not appear to teach or suggest the basic elements of independent claim 1, from which claims 2-5, 9, 10, and 12 depend. Levine et al. do not appear to teach or suggest what Maloney et al. lacks. Dependent claims 2-5, 9, 10, and 12 recite further elements not taught or suggested in Maloney et al., Levine et al., or a combination thereof. For example, claim 10 recites the method step of providing compliance related materials to a user. The Examiner asserts that Levine et al.'s teaching that the user can set up rules is equivalent to compliance materials as they perform an identical function in substantially the same manner with substantially the same results. Applicants respectfully disagree. The portion of Levine et al. relied on by the Examiner teaches "the subscriber can set up his rules for his profile using the loan criteria to indicate the conditions under which the subscriber wishes to be notified by the system of a published loan or loan pool." See column 21, lines 51-54. Applicants submit that allowing a subscriber to set up rules indicating under what conditions he/she wishes to be notified by the system of a published loan or loan pool cannot be seen to read on the method step of providing compliance related materials to a user, as is recited in claim 10. In the method and system of Levine et al., it appears the user is determining when he/she wishes to be notified of new products, whereas the claimed method step involves providing compliance related materials to a user. Thus, the combination of Maloney et al. and Levin et al. does not appear to teach or suggest the elements recited in the claims.

Independent claims 14 and 27 recite methods for providing a report used by a supervisor for supervising the activities of a number of representatives who record their activities in a

database. The methods involve the steps of identifying one or more unacceptable or acceptable activities, respectively. For at least the reasons set forth above, Maloney et al. do not appear to teach or suggest a method step of defining one or more unacceptable or acceptable activities or parameters. The Examiner asserts that the quality scoring report 26 of Maloney et al. would **inherently** track acceptable and unacceptable parameters. Applicants submit that there is no indication in Maloney et al. that the quality scoring would **necessarily** track acceptable and unacceptable parameters. As eluded to above, MPEP 2112 IV. states:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

(Emphasis added). Applicants submit that the claimed method steps, in particular the steps of identifying one or more unacceptable or acceptable activities and defining one or more unacceptable or acceptable activity parameters for detecting the one or more unacceptable or acceptable activities when the report is run against a database, are not **necessarily present** in Maloney et al. In fact, it would appear that such method steps are not performed by Maloney et al. It appears the Examiner is asserting that the claimed method steps could be performed by the system of Maloney et al., which is not a proper basis for rejection. Additionally, Levine et al. do not appear to teach such method steps. Thus, any combination of Maloney et al. and Levine et al. must fail to teach or suggest the steps of independent method claims 14 and 27.

Regarding claim 15, the Examiner asserts that Levine teach that loans not meeting the criteria or those that fall within the unacceptable parameters are recorded as being declined for that user, citing column 22, lines 19-37 for support. The portion of Levine et al. relied on by the

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Examiner states, "If the loan does not fall within any buyers' pre-set rules, notification step 1512 is skipped and the loan remains published on exchange system 200." Levine et al. also teaches the user being able to manually accept, decline or suspend individual loans in the pool, and review more specific details on each loan in the pool. However, Levine et al. do not appear to teach a method step of providing an alert for activities recorded in the database that fall within unacceptable activity parameters defined in the report, as is recited in claim 15. Applicants submit that the loan not falling within a buyer's pre-set rules is not the same as an activity of a representative falling with an unacceptable activity parameter, as is recited in the claim. Levine et al. appears to be directed to a system in which a user can select a loan based on various criteria. Such a method has different steps and a different result as compared to the claimed method. Levine et al. deals with loan characteristics, whereas the claimed method involves identifying unacceptable activities of a representative. Levine et al. thus cannot be seen to teach or suggest the claimed method step. Thus, any combination of Maloney et al. and Levine et al. cannot teach or suggest the elements of claim 15. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 11 was also rejected as being unpatentable over Maloney et al. in view of Levine et al. For at least the reasons set forth above, Maloney et al. do not appear to teach or suggest the basic elements of independent claim 1, from which claim 11 depends. Levine et al. do not appear to teach or suggest what Maloney et al. lacks. The Examiner takes Official Notice that it is old and well known for a database to record the activities of a user. Applicants submit that the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. Per MPEP 2144.04(C), Applicants respectfully traverse the taking of Official Notice and request the Examiner provide documentary evidence supporting the rejection in the next office action if the rejection is maintained.

Claims 17-26, 28, and 29 are rejected as being unpatentable over Maloney in view of Levine et al. and further in view of LaFore et al. (US 2002/0032640). The Examiner asserts that it would have been obvious to modify the database system as taught by Maloney et al. to include the financial and broker features of LaFore et al. to provide a more inclusive database system for

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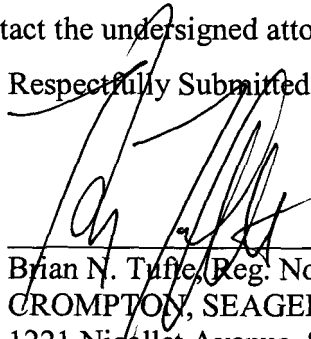
customer information. Applicants respectfully traverse the rejection.

As stated above, Maloney et al. fail to teach the basic elements of the claimed method. LaFore et al. do not appear to teach what Maloney et al. lacks. Further, even if one were to combine the teachings of Maloney et al. and Levine et al. with LaFore et al., one would not arrive at the claimed method. LaFore et al. do not appear to teach a method and system in which representatives are brokers who record their activities, and for example, where those activities are trades made on behalf of a client/customer. Thus, any combination of Maloney et al., Levine et al., and LaFore et al. does not appear to teach or suggest each and every element of the rejected claims. Withdrawal of the rejection is respectfully requested.

Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims are now in condition for allowance. If a telephone interview would be of assistance, please contact the undersigned attorney at 612-359-9348.

Respectfully Submitted,

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